costs are contractual costs incurred by a cable operator to carry on its business. Thus, to exclude franchise fees and franchise-related costs is deceptive. Surely the Commission does not intend to put its imprimatur on a deceptive trade practice.

3. The Supposed Ills The NPRM Seeks To Cure Are Not Ills At All: They Are A Product Of The Cable Act Requirement That Cable Systems Must Meet Local Community Needs And Interests As Determined By Each Local Franchising Authority.

As we have just discussed, neither the NPRM nor the industry comments address the true nature of franchise fees and franchise-related costs -- they merely assume an outcome to gloss over the inherent conflict between the goal of uniform rates and the desire for individualized franchise cost itemization. In fact, the NPRM's sleight of hand on this inherent conflict improperly departs from the Cable Act, which requires that a cable system be responsive to local community needs and interests, as individually determined through the local franchising process by each local franchising authority. See 47 U.S.C. §§ 521(2) and 546. Regardless whether the Commission or the industry would prefer the greater uniformity that might result from a regionalized or nationalized franchise process, the Cable Act forbids any effort to undermine the current franchise process in this proceeding.

We note in this regard that the comments filed by the industry in this proceeding include a number of gratuitous, self-serving and essentially dishonest statements. For example, Cole Raywid and Braverman ("CR&B") states that "The current scheme, with its franchise-specific emphasis, imposes an unnecessary burden on all affected parties." Comments of CR&B at 1. OCTA complains of the "unnecessary costs" of setting rates on a franchise-by-franchise basis. Comments of OCTA at 2. And NCTA complains that "unreasonable" franchising authorities may become "roadblocks" to adoption of "uniform" rates. Comments of NCTA at 14.[6]

The short answer to these and similar statements sprinkled throughout the industry's comments is that the Cable Act requires a "franchise-specific" emphasis because it provides that cable systems must be responsive to "local community needs and interests." Thus, individualized franchise requirements tailored to local community needs are not some sort of "unnecessary" inconvenience to be swept aside or punished; the requirements are a production of longstanding federal policy embodied in the Cable Act which the Commission is statutorily obligated to protect.

The cable industry is grounded in individual franchises for another reason as well: a franchise is the traditional means of granting a private company access to public property. As discussed above, franchise fees and franchise-related costs are the contractual compensation the franchising authority receives from the cable operator for the use of that public property. The fact that cities and counties have spent billions of dollars acquiring uncounted miles of rights-of-way along the very

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[6] We must point out here that unreasonableness is in the eye of the beholder. Franchising authorities are "unreasonable" only from the self-interested perspective of the industry and its advocates. And they are "roadblocks" only in the sense that they are the only means of ensuring a cable system is responsive to local needs.

routes that are most convenient to cable operators for building their systems is just that -- a convenience to cable operators. There is no Constitutional or statutory right of access to the public property of a particular local government without compensation. And this franchise process has provided great benefits to the cable industry. A cable operator could conceivably assemble private easements giving it the right to reach all its customers. Obviously, it would take a great deal of time and enormous expense for a cable operator to establish its own right-of-way network -- far more than the compensation that cable operators currently provide local governments through franchises.

The franchise-based system also provides other advantages, which the industry acknowledges only when it is convenient. For example, NCTA argues against strict uniformity in channel line-ups when considering which systems may be eligible for uniform rates, saying "Subscriber tastes in one community may differ from tastes in a nearby community, resulting in the same number of channels of regulated service but different program offerings to subscribers." Comments of NCTA at p. 8. But the industry cannot have it both ways. In fact, local community needs <u>do</u> vary and that is reflected in different franchise requirements in different communities.

Industry complaints that DBS and wireless cable services do not have to incur franchise costs are beside the point. DBS and wireless cable providers may not have to deal with local franchise issues, but they have to deal with other costs -- satellite licensing and auction costs, and launch insurance (or lack thereof), to name just a few -- that cable operators do not face. Each technology has its strengths, its weaknesses, and its idiosyncracies. The Commission should not be in the business of subsidizing cable operators by relieving them of costs unique to their particular distribution technology.

II. CABLE OPERATORS DO NOT NEED THE PROPOSAL TO CHARGE UNIFORM RATES; THEY MERELY WANT THE PROPOSAL TO AVOID THE TRADEOFFS THAT OTHER BUSINESSES ROUTINELY HAVE TO MAKE.

Perhaps the most glaring defect of the NPRM proposals is that, for all the mischief they would do to the local cable franchising and basic rate regulation processes envisioned by the Cable Act, the proposals are entirely unnecessary. Without any change in its current rules, cable operators could achieve any efficiencies associated with uniform rates. After all, the Commission's rules establish only maximum *permitted* rates, not maximum *required* rates.

Nothing in the Commission's current rules precludes an operator from setting uniform rates across franchise boundaries, so long as that rate did not exceed the maximum permitted rate in any franchise area in which it applied.[7] Indeed, an operator is free under the current rules to set a single regionwide -- or even

[7]We also note that nothing in the Commission's rules ever requires an operator to increase rates. Yet operators regularly notify subscribers that rate increases are "required" by the Commission's rules. NCTA makes a similar claim in its comments, when it states that the Commission's rules "establish precise amounts that must be added to" and that an operator that changes its lineup "must modify its rates" (emphasis added). In fact neither claim is true. Operators could decline to increase their rates if they wished.

nationwide -- rate, as long as that rate does not exceed the maximum permitted in any franchise area.

At least one cable operator, Cablevision Systems Corp. ("Cablevision"), concedes as much. Cablevision admits it has established uniform rates across several franchise areas under the FCC's current rules. Comments of Cablevision at p. 4. According to the New Jersey Board of Public Utilities ("NJBPU"), other operators have as well. Comments of NJBPU at 3-4.

While it has implemented uniform rates without benefit of any FCC rule changes, Cablevision nevertheless supports the NPRM's proposals because, unlike the status quo, those proposals would allow Cablevision to charge ostensibly "uniform" rates while simultaneously enabling it to increase its revenues to the maximum allowed in each separate franchising area. In other words, Cablevision likes the NPRM <u>not</u> because it wishes to be able to charge uniform rates (which it already does), but because it wants to charge <u>uniformly higher</u> rates.

While we respect the profit motive, it seems craven and self-serving for the industry to continually come to the Commission with clever new schemes under which the industry can increase its rates and revenues. This is especially the case because it seems unlikely that an operator like Cablevision would have voluntarily adopted a uniform rate policy under current rules without a good reason. If Cablevision reduced its rates to a uniform level simply to get the benefit of less than $3,700 in rate card printing costs, then it surely would not have done so unless the supposedly "significant" amount of corresponding revenue lost was <u>less</u>

than the $3,700 it saved.[8] Since Cablevision was so careful to identify how much it saved in printing costs, but did not specify how much revenue it "lost", it would seem fair to conclude that Cablevision really did not lose much revenue at all. Indeed, perhaps Cablevision was responding to marketing studies that showed that a small drop in its rates would actually boost subscribership. We do not know, but Cablevision's claimed efficiencies are poorly documented. And the fact that Cablevision voluntarily adopted lower uniform rates certainly suggests no need to allow it or other operators to charge uniformly higher rates.

The point, of course, is that Cablevision has reduced its rates under the current system and established its own uniform rates, without any need to change the Commission's current rules. Clearly, the Commission does not need to act in this case, unless it sees its role as that of a booster of the industry's bottom line, rather than as the protector of subscribers' pocketbooks. We believe the industry is capable of taking care of its own finances, without any help from the Commission. And in any event, we note that the Commission has no statutory authority to advance the financial interests of the cable industry over the financial interests of subscribers.

In fact, the Cablevision example illustrates a fundamental fallacy in the industry's position. The industry ignores, and seeks Commission relief from, a tradeoff that ordinary competitive businesses must make every day. Many

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[8] We also note in passing that neither Cablevision nor any other operator proposes any mechanism by which subscribers would see so much as a penny of this $3,700 savings in printing costs.

businesses have multiple outlets in a given metropolitan area. And cost and demand conditions will often vary from outlet to outlet. Normal businesses that, unlike cable operators, face competition, have to make a choice: revenues could be maximized by charging different prices at each outlet -- say, higher prices where rental costs are higher. On the other hand, advertising efficiencies can be achieved over the same metropolitan area by charging a uniform rate. Sometimes, businesses conclude that the efficiencies associated with advertising outweigh the revenue detriment, and they advertise a uniform rate, even though that rate may yield less revenue than if the business had charged the individual profit-maximizing price at each particular outlet. But making decisions about such tradeoffs are a fact of life for most competitive businesses.

The franchise-specific benchmark rates under the FCC's current rules are intended to replicate the competitive profit-maximizing rate in each area. Under current rules, operators face the same tradeoff that other competitive businesses with multiple outlets do. Some, like Cablevision, opt to sacrifice revenue for the perceived benefits of being able to advertise uniform rates. Others may not. But other <u>competitive</u> businesses may <u>not</u> do what the NPRM would allow operators to do: move rates at some outlets <u>above</u> competitive rates so as to simultaneously gain the benefits of individual-outlet revenue maximization and the efficiencies of area-wide uniform rates. The Commission should reject the industry's transparent attempt to recapture monopoly power that the Commission's earlier rules were intended to take away.

III. THE PROPOSALS ARE FLAWED BECAUSE THEY WILL NOT HAVE THE DESIRED EFFECTS.

We have already pointed out that, despite claims to the contrary, the NPRM proposals will not be revenue neutral because they would allow rates to increase to some degree. We have also noted that the proposals are unnecessary because, under current rules, operators can already establish rates that are actually more "uniform" than the ones that would result from any of the NPRM proposals. But the proposals are also flawed because they would not achieve the goals stated in the NPRM.

A. The Proposals Will Not Result in Uniform Rates.

As noted above, even the NPRM and the industry commenters concede that none of the touted schemes will result in truly "uniform" rates. To the contrary, all of the proposals would allow for -- or require -- franchise-area specific treatment of franchise fees and franchise-related costs -- in other words, non-uniform rates. This is one of the reasons that other commenters, including NATOA and NJBPU, have objected to the NPRM.

But that is not all. Operators have requested greater discretion in picking and choosing the extent of the geographic area over which the "uniform" rates would apply, the channel capacities and lineups of the systems, and a whole host of other variables. In selecting an approach, is the Commission prepared to test how its methodology might affect communities in ADI's all across the country? Will it model the range of options available to operators so the Commission will have at least some idea of what might actually happen? Or will the Commission just take a shot in the dark and cross its fingers?

As the Commission should know by now, cable operators have every incentive to promote schemes that allow them to game the system by exempting a carefully selected "high rate" system and equally carefully selected "low rate" system to get the maximum possible average rate, and the Commission can rest assured that this is what the industry will do.

In doing so, operators will succeed only in creating a patchwork of different rates. Each patch may (or may not) be larger than current rate patches, but there will still be many adjacent systems, owned by the same operator, that will have different rates. Thus, to a great extent, the goal of "uniform" rates is a mirage, and based on the record, the Commission can have no idea of what the actual result will be. The only sure results are that (1) some subscribers will pay rates that the Commission has previously deemed unreasonable; (2) rates will <u>still</u> not be uniform; and (3) determining whether operators have complied with the rules will become more complicated and difficult for both the Commission and local franchising authorities.

B. The Proposals Will Not Protect Subscribers From Unreasonable Rates.

The NPRM claims that its proposals will "fully protect[] subscribers from unreasonable rates . . . ." OCTA asserts that the proposed changes would be "harmless" to subscribers because the proposals are revenue neutral. Comments of OCTA at 5.

With all due respect, both of these statements are blatantly untrue. Under one of the NPRM's methodologies, roughly half of all basic subscribers will pay more, as will the same fraction of CPS subscribers; under the other NPRM proposal, most subscribers may pay less for basic, but <u>all</u> will pay <u>more</u> for CPS. This, despite the fact that many of those subscribers paying higher rates may have originally been paying lower rates, which were determined to be reasonable under the Commission's current rules. This hardly constitutes protecting subscribers from unreasonable rates, and it is hardly "harmless."

A clear example of the way these proposals may affect subscribers is TCI's proposed two-part test for including a franchise area in a "uniform" rate. Comments of TCI at 10-12. The second prong of TCI's proposal, the "rate variation test,"[9] would allow an operator to raise rates in a particular franchise area by as much as 5%. TCI uses a relatively benign example, in which the rate variation between two franchises is only $0.50 for basic and CPS combined, so one franchise area sees rates go up by 25 cents and the other sees them go down by 25 cents. This does not seem like much -- but in the example, the rate variation between the two systems was only 1%, <u>not</u> 5%. TCI would permit a variance of as much as 5%, and 5% of $20 is $1.00. In other words, TCI's methodology could allow subscriber rates in many communities to go up by $1.00 or more a month. In fact, in TCI's own example, a rate variation of as much as

[9] We will discuss the first part of the test below when we examine the issue of uniform services.

$1.25 a month -- $15 per year -- would have met TCI's test. Thus, many subscribers will see significant rate increases if TCI's method -- or anything like it -- is adopted.

C. The Proposals Will Increase, Not Reduce, Subscriber Confusion.

If the degree of concern among the industry commenters for reducing subscriber confusion were truly genuine, that would be heartening. Never have we seen such an outpouring of sentiment for the correction of such a trivial problem. Other than a single news article quoted by Time Warner (Comments of Time Warner Cable at 2-3), there is absolutely no evidence at all of subscriber confusion in the record -- and certainly no evidence that would warrant increasing subscriber's rates, even as much as one penny.

Time Warner is the only commenter of which we are aware that even attempted to introduce evidence of subscriber concern over this issue. Subscribers have only one complaint about rates: they are too high. We are not aware of any subscriber who ever complained about confusion when he learned his rates were lower than his neighbor's. In fact, people expect to pay different rates if they move. They only complain if their new rates are higher than the old ones, or when their supposedly regulated rates continue to go up without apparent justification.

In fact, all of the various uniform rate proposals will uniformly lead to greater, not less, subscriber confusion -- and deception. Under the proposals, neighboring subscribers would see one "uniform" rate in advertisements, but different rates in their bills when franchise costs are added. And if franchise costs vary, the neighboring subscribers in different jurisdictions would still see different retail prices in their two bills and neither of the two different prices in their bills would be the same as the supposedly "uniform" rates they saw in the operator's advertisements!

This confusion and deception will only be amplified by the issue of system channel capacity and lineups. Unless the Commission requires that "uniform" rates be imposed only in identical systems, subscribers will be even further confused -- and more angry. Currently, different rates and lineups are a fact of life, and for the most part people understand how the system developed and why things are the way they are. But what happens when subscribers are paying the same rate for different service, after some of them were handed a rate increase in the name of "uniform" rates? Operators claim to be concerned with providing the same rate for the same service, but none of their schemes would create such a regime. In fact, proposals such as OCTA's are clear attempts to raise rates: OCTA says it would be happy to provide "uniform" service, but only if it can raise rates to adjust for the added channels. Comments of OCTA at 6-8. Once again, rates go up, and revenue neutrality goes out the window.

If subscriber confusion is truly a problem, the Commission will find that the NPRM proposals do not alleviate that problem. In fact, however, subscriber confusion is not at present a serious problem. The Commission has no evidence of it, and neither does the industry. But adopting the NPRM or the industry's proposals will make subscriber confusion a problem. The simple truth is that mentioning subscriber confusion is a convenient way for the industry to profess concern for subscribers while seeking to increase its rates and actually charging non-uniform rates.

D. There Is No Evidence that the Proposals Will Increase Cable Penetration.

One of the NPRM's cited justifications is that "uniform" rates might increase cable penetration. We fail to understand why the Commission is so concerned with cable penetration. The Cable Act does not specify that the Commission should concern itself about whether cable serves 64% or 74% of 84% of Americans, or any other particular figure. History demonstrates that the cable industry is perfectly capable of taking steps to increase its penetration, and of competing against DBS and the telephone industry. For that matter, it is not the Commission's business to promote cable at the expense of DBS or any other technology. Increasing penetration is as much of a red herring in this proceeding as reducing subscriber confusion.

In any event, what evidence is there that "uniform rates" will help penetration? None of the commenters even tries to introduce data that would remotely support this contention. The most the industry has is speculation, unsupported even by anecdote. As we said earlier, if it really wants to, an operator can set its own uniform rates within the current rules. The Commission does not have to coddle giants like TCI and Time Warner, especially not against competition from the DBS industry.

In fact, the primary reason that penetration rates have held steady at around 65% is very likely high prices. At rates of $20-$25 a month for basic and CPS service, it is not surprising that roughly a third of American households do not subscribe. Many simply do not feel the need, and will not unless the price drops substantially.

Ironically, if price is the main barrier to increased penetration, none of the uniform rate proposals will help, because none of them will reduce rates. Indeed, this illustrates the futility of what the Commission is doing. The Commission has never done a cost study to determine the true level of monopoly profits the industry has been collecting, yet it is willing to experiment with ways to increase those profits without any factual foundation.

E. Any Reduction in Costs and Increase in Efficiency Will Benefit Only the Operators, and Not Subscribers or Franchising Authorities.

It may well be true that "uniform" rates could lower advertising costs and give operators the benefits of certain efficiencies.[10] We note, however, that the Commission has no quantifiable evidence of this, other than a couple of anecdotes from Cablevision. We also note that the alleged benefits flow directly to the operators, and do not benefit subscribers at all. The reason is that the Commission's rate rules do not address the consequences of such efficiencies. There is no place on a Form 1240 to reduce an operator's costs, and rates, as a

[10] We must add, however, that it is difficult to understand why operators should be allowed to achieve such efficiencies while, at the same time, sending bills to subscribers that are decidedly non-uniform due to franchise costs. Again, this is nothing more than deceptive advertising.

result of the claimed efficiencies. We can only conclude that operators will see a windfall, with no concomitant benefits to subscribers at all.

We note with interest the comments of Blade Communications, Inc. ("Blade"). Blade correctly notes that franchise-related costs are already included in rates under the benchmark system. Comments of Blade at 4. Thus, if those costs are to be itemized as the Commission and other commenters have proposed, there must be a mechanism for first reducing basic rates, on a franchise-by-franchise basis, to extract pre-existing franchise costs before they are added back again. Otherwise, operators will receive a windfall, subscribers a rate increase, and operators will double-recover franchise costs. Of course, contrary to one of the stated goals of the NPRM, this would also require a considerable administrative burden, as each local franchising authority would have to review the accuracy of the operator's claimed franchise-related costs in every franchise covered by the uniform rate.

In any event, the Commission should not allow vague, unsubstantiated claims regarding cost savings to take precedence over the clear and real harm to subscribers -- higher rates and deceptive advertising -- that will result from the proposals being considered.

Finally, we note that the entire concept of reducing administrative costs is brought into question by the fact that there is no evidence that operators generally charge uniform rates in currently unregulated areas. Since operators are free to do so, even without regard to franchise fees and franchise-related costs, one would expect that if there were any true efficiencies to be had, operators would already be taking advantage of the possibility where they could. Yet nothing in the record suggests that operators do.

F. The Proposals Do Not Benefit Subscribers or Franchising Authorities or Subscribers, and Do Not Serve the Public Interest.

Despite industry's professed desire to reduce administrative burdens on all concerned, the simple truth is that none of the proposals represents any benefit to subscribers or franchising authorities. In fact, all of the proposals would necessarily increase the administrative burdens on franchising authorities -- in many cases, exponentially so.

As noted earlier, each franchising authority would have no way to determine whether the new "uniform" rate has been accurately calculated without reviewing all of the individual rate information and franchise costs in every other franchising authority's jurisdiction included in the so-called "uniform" rate area. Then each community would still have to review the final "uniform" rate calculation, which adds yet another step in an already complicated rate review process.[11]

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[11] We recognize that not all franchising authorities agree, as the Massachusetts Cable Commission has filed comments supporting the proposals of the NPRM and the industry. But we submit that our position -- representing independent local governments and not a statewide franchising authority -- is more typical of local franchising authorities across the country, because only a handful of states regulate cable rates at the state level. The complications of dealing with many more communities and many more operators presumably affects the way state-wide authorities view the issue, because they have different burdens and obligations that do individual communities.

If anything, MCC's comments indicate that the Commission must carefully consider varying local conditions before adopting any rules. For instance, as a statewide authority, the MCC feels that limiting a uniform rate area to an ADI is too

Of course, there were no administrative burdens on subscribers in the first place, other than paying the Commission's regulatory fees. After adoption of the 1996 Act, subscribers no longer even have the right to file a Form 329. Consequently, any claim that any of the proposals helps subscribers is nonsense.

Finally, the proposals fail to serve the public interest in general. We have already noted the many ways in which subscribers will be hurt by this new scheme. In addition, we would observe that any claims by the industry regarding the public interest benefits of this proposal are without merit. The industry regards its own private interests as the only measure of the public interest. Consider, for example, the arguments made by NCTA. NCTA asserts that "uniform" rates will serve the public interest because they will allow operators to market their services more effectively; operators will face reduced administrative burdens; operators will be able to compete more effectively against other video service providers; and customer service operations will improve in undefined ways. Comments of NCTA at 4. Of the four claimed benefits, only the last has anything to do with anything but the operator's private interests. And the last is belied by the facts. Operators have begun centralizing their customer service operations to a remarkable degree, to the point that many communities have no local customer service operations

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restrictive. We disagree strongly with this position and feel that an ADI is too large an area and thus not restrictive enough. The correct solution may be that the local franchising authority should approve the extent of any uniform rate area within its jurisdiction. This is the position advocated by NJBPU. NJBPU's proposal would accommodate the needs of state-wide franchising authorities as well as those of individual communities like the members of the Coalition.

within their boundaries at all. "Uniform" rates will only allow this process to go further, so customer service representatives will have no connection to or knowledge of the particular communities they serve at all.

Thus, NCTA seems to believe that the "public interest" is no more than the industry's interests, so that by advancing its private interests it also advances the public interest. By that standard, of course, there is no such thing as the public interest. Thus, it is up to the Commission to look beyond the self-serving interests of the industry and to consider the interests of subscribers in any decision it makes.

IV. THE SPECIFIC RECOMMENDATIONS OFFERED BY THE INDUSTRY ARE FLAWED BECAUSE THEY WOULD ALLOW OPERATORS TO MANIPULATE THE SYSTEM, INCREASE RATES, AND EVADE REGULATION.

The industry has seized the NPRM as an opportunity to put forth a number of mischievous proposals which, if adopted even in moderation, would prove detrimental to the interests of the Commission, subscribers, and local franchising authorities. The Commission and local franchising authority would soon find it impossible to keep up with all the rate changes being implemented by operators. The result would be the mere pretense of regulation, accompanied by increased rates.

A. The Flexibility in Geographic Scope, Choice of Methodologies, and Range of Services Proposed by Industry Commenters Would Make It Impossible for the Commission and Local Franchising Authorities to Monitor Operators' Activities.

Industry commenters have proposed that operators be given almost unlimited flexibility regarding the geographic scope covered by a particular "uniform" rate; a choice of methodologies for calculating rates, including ad hoc methodologies of each operator's own devising; and broad definitions of the capacity or services provided by systems subject to "uniform" rates. We oppose all of these recommendations because they will offer the industry practically unlimited flexibility.

The industry naturally finds such flexibility desirable, and operators would undoubtedly use it to their best advantage -- but that does not mean that they will do what is best for subscribers or will reduce costs and burdens on franchising authorities. The industry seems to forget, for instance, that rate regulation by definition applies only to areas <u>not</u> subject to effective competition. In other words, where the operator enjoys monopoly power. To the extent that operators need "flexibility" to respond to competition, they will be free to do so <u>when</u> competition arrives, since rates will be deregulated at that point. The Commission cannot allow operators who by definition still enjoy market power to evade effective rate regulation by establishing a regulatory scheme with no checks on the regulated entities.

For example, NCTA, OCTA, CR&B and Cablevision, among others, have urged the Commission to allow operators to establish their own boundaries on the region in which a given "uniform" rate would apply. This would allow operators to pick and choose systems to serve their own ends. As often as not, this will mean manipulation to achieve not just increased efficiency, or the reduction of subscriber confusion, but anticompetitive behavior, cross-subsidization, and increased rates and revenues.

Industry commenters have also argued that they should be allowed to include any systems they choose within a region, and to exclude others. Assuming that increased efficiency and decreased subscriber confusion are the industry's paramount goals, why on earth is this flexibility necessary? Why would an operator want the right to exclude a system that would otherwise appear to be a candidate for inclusion in a "uniform" rate?

The answer is money, and a crass desire to wring out the last bit of monopoly profits an operator can before competition arrives. While the NPRM and the industry have made much of the supposed increased efficiencies allowed by the different proposals, there is no showing of how significant these efficiencies actually are. What is really going on here is an effort to increase rates. The net effect of most of the proposals would be to threaten if not destroy revenue neutrality. The fact is that we do not know enough about how any of the proposed methodologies will work to assume otherwise.

Let us review some points made at the outset on the subject of revenue neutrality. The Commission has created a separate regulatory scheme for small systems on the theory that they have fewer efficiencies and greater costs, and therefore should be permitted to charge more. Congress has exempted such systems from CPS regulation in the Telecommunications Act of 1996. If such systems are included, surely average rates will go up, and revenue neutrality will be lost.

Likewise, if unregulated systems are included, the Commission has no evidence that average rates -- and therefore overall revenues -- will not go up. As we noted earlier, the presumption that the only reason a community decides not to regulate rates is that rates are reasonable is totally without foundation. In fact, Cablevision has noted that one reason to include unregulated systems is to ensure that rates in those communities are actually reasonable. Thus, the industry itself does not accept the logic of the NPRM. The fact that other commenters such as TCI make arguments that support their self-interest should be discounted, and Cablevision is to be congratulated for its candor.

OCTA and other industry commenters have suggested that operators be allowed to increase rates if they add channels to systems to make their lineups more uniform. This, too, will destroy revenue neutrality. Consider the following hypothetical case: system A has 40 channels and subscribers pay $20 for basic and CPS, and system B has 45 channels and subscribers pay $25. Under either of the Commission's proposals, rates would be averaged in some way, and presumably the resulting total rate would fall between $20 and $25. But if system A adds 5 channels and raises its rates to a total of $21, the new averaged "uniform" rate will increase, and subscribers in system B now will pay more for the same service because the average rate will increase, and the operator will collect more revenue overall. Thus, this is not a revenue-neutral proposal at all.

Consider another area in which the operators have requested flexibility. OCTA, NCTA, Cablevision, Time Warner, and CR&B have all made proposals regarding the methodology to be used in setting the "uniform" rate. Essentially, they want the option of using either of the Commission's methodologies, and the ability to blend them or develop their own ad hoc methodologies. This is clearly good for them, but it is not at all clear that it is good for subscribers, franchising authorities, or the Commission. We must bear in mind that the operators have all the facts and figures at their disposal, and they have no reason to put forth a particular ad hoc methodology or blended approach or to pick an option that does not result in increased revenues.

The Commission and local franchising authorities, in contrast, do not have the revenue and cost information to assess these various ad hoc proposals. Nor do they have the resources to examine all the permutations and determine which one best balances the interests of all interested parties. Giving the operators the kind of flexibility they seek would merely allow them to advance their own private interests more efficiently without allowing those responsible for considering the public interest to exercise the necessary judgment and control.

A third area in which the industry commenters have sought broad flexibility is in the definition of "uniform services." The NPRM seems to assume that "uniform" rates should only apply to systems that offer uniform or identical channel capacity and lineups. This is critical because, as noted above, allowing "uniform" rates for anything less than identical services will not reduce subscriber confusion and only emphasizes the futility of pretending to offer "uniform" rates. The industry commenters, however, have sought to water down the concept of uniform services. Time Warner, for instance, refers to "comparable" channel lineups, and would allow systems to be included if their programming costs did not vary by more than 10%.[12] For its part, TCI would introduce a "substantially similar" test, in which a variance of 10% in the number of channels would be permitted. CR&B combines these approaches, suggesting a 15% variance in channels and programming costs.

All of these proposals destroy any concept of uniformity, and are thus unacceptable. When combined with the right to pick and choose among systems, and to calculate franchise-related costs in unexplained ways, such a scheme would be so chaotic the Commission would never be able to determine what was happening, and neither would local franchising authorities.

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[12] Incidentally, Time Warner labels that amount *"de minimis"*. Somehow, we believe that if Time Warner were faced with an FCC-ordered rate cut of 10%, Time Warner would <u>not</u> consider such a rate cut *de minimis*. Likewise, we find it hard to accept a 10% difference in a major cost to be *de minimis*.

B. Allowing Operators to Average Equipment Rates on an Overly Broad Basis Is Unfair to Subscribers in Older, Low Capacity Systems.

Regional equipment averaging is simply unfair to everybody except the operator. Why should a subscriber in a 330 MHz, 30 channel system with old, fully depreciated non-addressable converters subsidize a subscriber in a brand new 550 MHz, 60 channel system, with addressable converters? This makes no sense at all. While we recognized that the 1996 Act permits regional aggregation of equipment costs, it contains an exception for equipment used by basic-only subscribers in rate regulated areas. Thus, those subscribers would have to be excluded from any regional equipment rate averaging proposal, which means additional complexity and therefore an increased administrative burden on operators and franchising authorities.

In addition, as we said, it is simply unfair to permit this kind of cross-subsidy. In promulgating any "aggregated" equipment cost rules, the Commission should carefuly limit the categories of equipment that can be aggregated. Operators should not be allowed to aggregate old, simple converters with new, technologically advanced ones.

CONCLUSION

None of the proposals before the Commission will actually establish truly uniform rates. To the contrary, all of the proposals will merely allow operators to charge higher rates and create more subscriber confusion and deception. For these and the other reasons set forth above, the Commission should abandon the uniform rate proposal entirely.

Respectfully submitted,

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